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4 RICHARD SEPULVEDA,  
5 Plaintiff,  
6 v.  
7 TAQUERIA Y CARNICERIA MARTINEZ  
8 LLC, et al.,  
9 Defendants.

10 Case No. 23-cv-01781-LJC  
11

12 **NOTICE RE: DEFAULT JUDGMENT  
13 PROCEDURE**

14 Re: ECF No. 9  
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16 As the Clerk of Court has entered default against Taqueria y Carniceria Martinez LLC, et  
17 al. (ECF No. 9), the Court provides this notice to the parties regarding any default judgment  
18 motions filed pursuant to Federal Rule of Civil Procedure 55(b)(2). All motions for default  
19 judgment shall be filed no later than July 24, 2023. Requests for additional time shall be made in  
20 accordance with Civil Local Rule 6-3.

21 In addition, all default judgment motions shall be filed in compliance with Civil Local  
22 Rule 7-2, be structured as outlined in Attachment A below, and include all relevant legal authority  
23 and analysis necessary to establish the case. If no opposition is filed by the deadline under Rule 7-  
24 3(a), the moving party shall instead file proposed findings of fact and conclusions of law (as  
25 outlined in Attachment A) by the reply deadline under Rule 7-3(c). The moving party shall also  
26 email the proposed findings in Microsoft Word format to [ljcpo@cand.uscourts.gov](mailto:ljcpo@cand.uscourts.gov). No chambers  
27 copies are required.

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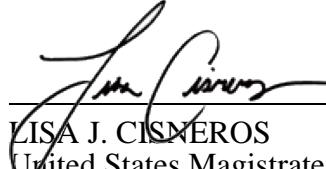
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1 Plaintiff shall serve this notice upon all other parties in this action and file proof of service  
2 thereafter.

3 **IT IS SO ORDERED.**

4 Dated: June 8, 2023

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6 LISA J. CISNEROS  
7 United States Magistrate Judge

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United States District Court  
Northern District of California

## ATTACHMENT A

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## I. INTRODUCTION

*(Relief sought and disposition.)*

## II. BACKGROUND

*(The pertinent factual and procedural background, including citations to specific pages or paragraphs in the Complaint and other competent evidence.)*

### **III. LEGAL STANDARD**

*(Include the following standard)*

Federal Rule of Civil Procedure 55(b)(2) permits a court, following default by a defendant, to enter default judgment in a case. The decision of whether to grant or deny a request for default judgment lies within the sound discretion of the district court. DIRECTV, Inc. v. Hoa Huynh, 503 F.3d 847, 852 (9th Cir. 2007).

At the default judgment stage, the factual allegations of the Complaint, other than those pertaining to damages, are deemed admitted. Fed. R. Civ. P. 8(b)(6) (“An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied”); Garamendi v. Henin, 683 F.3d 1069, 1080 (9th Cir. 2012). “However, a defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law.” DIRECTV, Inc., 503 F.3d at 854 (internal citation and quotation marks omitted)). Therefore, “necessary facts not contained in the pleadings, and claims which are legally insufficient, are not established by default.” Cripps v. Life Ins. Co. of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992). Further, the scope of relief is limited by Federal Rule of Civil Procedure 54(c), which states that a “default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings.”

In determining whether default judgment is appropriate, the Ninth Circuit has enumerated the following factors for courts to consider:

(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute

1 concerning material facts; (6) whether the default was due to  
2 excusable neglect, and (7) the strong policy underlying the Federal  
3 Rules of Civil Procedure favoring decisions on the merits.

4 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

#### 5 **IV. DISCUSSION**

##### 6 **A. Jurisdiction and Service of Process**

7 *(Include the following standard)*

8 In considering whether to enter default judgment, a district court must first determine  
9 whether it has jurisdiction over the subject matter and the parties to the case. See In re Tuli, 172  
10 F.3d 707, 712 (9th Cir. 1999). While evaluating the existence of jurisdiction, the court may  
11 resolve factual disputes by “look[ing] beyond the complaint” and considering “affidavits or other  
12 evidence properly brought before the court.” Savage v. Glendale Union High Sch., Dist. No. 205,  
13 Maricopa Cnty., 343 F.3d 1036, 1040, n.2 (9th Cir. 2003) (considering subject matter jurisdiction  
on a 12(b)(1) motion).

###### 14 **1. Subject Matter Jurisdiction**

15 *(Establish the basis for the Court’s subject matter jurisdiction, including citations to relevant case law  
16 and United States Code provisions)*

###### 17 **2. Personal Jurisdiction**

###### 18 **a. Basis for Personal Jurisdiction**

19 *(Establish the basis for the Court’s personal jurisdiction, including citations to relevant legal  
20 authority, specific to each defendant. If seeking default judgment against any out-of-state defendants,  
21 this shall include a minimum contacts analysis under Schwarzenegger v. Fred Martin Motor Co., 374  
22 F.3d 797, 802 (9th Cir. 2004)).*

###### 23 **b. Service of Process**

24 *(Establish the adequacy of the service of process on the party against whom default is requested,  
25 including relevant provisions of Federal Rule of Civil Procedure 4.)*

##### 26 **B. Eitel Factors**

27 *(A detailed analysis of each individual Eitel factor, separated by numbered headings. Factors 2  
28 (merits of substantive claims) and 3 (sufficiency of complaint) may be listed and analyzed under one*

1 heading. Plaintiff(s) shall include citations to cases that are factually similar, preferably within the  
2 Ninth Circuit.)

3 **C. Relief Sought**

4 (An analysis of any relief sought, including a calculation of damages, attorney's fees, and costs, with  
5 citations to relevant legal authority.)

6 **1. Damages**

7 (As damages alleged in the complaint are not accepted as true, the proposed findings must provide (a)  
8 legal authority establishing entitlement to such damages, and (b) citations to evidence supporting the  
9 requested damages.)

10 **2. Attorney's Fees**

11 (If attorney's fees are sought, the proposed findings shall include the following: (1) Evidence  
12 supporting the request for hours worked, including a detailed breakdown and identification of the  
13 subject matter of each person's time expenditures, accompanied by actual billing records and/or time  
14 sheets; (2) Documentation justifying the requested billing rates, such as a curriculum vitae or resume;  
15 (3) Evidence that the requested rates are in line with those prevailing in the community, including rate  
16 determinations in other cases of similarly complex litigation, particularly those setting a rate for the  
17 plaintiff's attorney; and (4) Evidence that the requested hours are reasonable, including citations to  
18 other cases of similarly complex litigation (preferably from this District).)

19 **3. Costs**

20 (Any request for costs must include citations to evidence supporting the requested costs and relevant  
21 legal authority establishing entitlement to such costs.)

22 **V. CONCLUSION**

23 (Disposition, including any specific award amount(s) and judgment.)

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